

additional data become available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

#### References cited

A complete list of all references cited herein are available upon request from the Snake River Basin Office (see **ADDRESSES** section).

#### Author

The primary author of this document is Patricia C. Klahr (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U. S. C. 1531 *et seq.*).

Dated: September 20, 1995.

John G. Rogers,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 95-23975 Filed 9-26-95; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 656

[Docket No. 950915230-5230-01; I.D. 062895A]

RIN 0648-AH57

#### Atlantic Striped Bass Fishery; Change in Regulations for Exclusive Economic Zone

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS requests public comments on a proposed rule which would remove a Federal moratorium on the harvest or possession of Atlantic striped bass in the exclusive economic zone (EEZ), 3-200 nautical miles (5.6-370.6 km) offshore from Maine to Florida, and impose a minimum size limit of 28 inches (71.1 cm) (total length), for Atlantic striped bass possessed in or harvested from the EEZ. State regulations would apply to any striped bass being transported into a state's jurisdiction from the EEZ.

**DATES:** Written comments must be received on or before October 27, 1995.

**ADDRESSES:** Send comments on this proposed rule or supporting documents to Richard H. Schaefer, Director, Office of Fisheries Conservation and

Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the environmental assessment/regulatory impact review are available from the same address.

**FOR FURTHER INFORMATION CONTACT:** William T. Hogarth, 301-713-2339.

#### SUPPLEMENTARY INFORMATION:

##### Background

This proposed rule is promulgated under the Atlantic Striped Bass Conservation Act (Act), Public Law 100-589, reproduced at 16 U.S.C. 1851 note. Section 6 of the Act requires the Secretary of Commerce (Secretary) to promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*); and necessary and appropriate to (1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a state; and (2) achieve conservation and management goals for the Atlantic striped bass resource. In developing the regulations, the Secretary is required to consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity. The ASMFC, and the Mid Atlantic and New England Regional Fishery Management Councils have agreed that the moratorium should be removed.

The Atlantic striped bass occurs predominantly in internal state waters and the territorial sea. Historically, only about 7 percent of commercial landings have been taken seaward of 3 miles (5.6 km) from the coastline. Management responsibility for Atlantic striped bass in coastal waters resides primarily with the coastal states through the ASMFC's Interstate Fisheries Management Plan for Striped Bass (Striped Bass Plan). The Striped Bass Plan was adopted in 1981 by the coastal states from Maine through North Carolina in response to a severe decline in commercial landings and a decline in juvenile production in Maryland.

There have been five amendments to the Striped Bass Plan to respond to the changing condition of the stocks. Increasingly stricter state regulations were imposed by Amendments 1 through 3 to the Striped Bass Plan from 1981 through 1989. These regulations restricted further harvest of Atlantic striped bass by recreational and

commercial fisheries and allowed rebuilding of the stocks. Amendment 4 to the Striped Bass Plan, approved by ASMFC in October 1989, allowed for a limited increase in harvest beginning in 1990. In November 1990, a moratorium on the harvest and possession of striped bass in the EEZ was implemented under the Act, to support the ASMFC Striped Bass Plan.

Amendment 5, approved in March 1995, completely replaced the original Striped Bass Plan and all subsequent amendments and addenda. Even though the ASMFC declared the striped bass stocks restored as of January 1, 1995, with the exception of the Delaware river and the Roanoke/Albemarle sound stocks, Amendment 5 took a conservative approach and established a 2-year transition period during which the increase in harvest is limited to a fishing mortality (F) rate of 0.33, rather than a restored stock level of F = 0.40.

The Federal ban on the harvest and possession of striped bass in the EEZ is being re-examined in view of the ASMFC's declaration that striped bass have been restored and the ASMFC's regulations implementing Amendment 5 to the Striped Bass Plan.

#### Relevant Activities Pursuant to Section 6

In response to Section 6 of the Act, NMFS considered several regulatory options for the EEZ and consulted with the ASMFC, the New England and Mid-Atlantic Councils, and other affected Federal and state entities. There was no consensus view on what action NMFS should take. As a result, NMFS considered the following four options:

*Option 1* - Open the EEZ with no harvest or possession restrictions on Atlantic striped bass.

*Option 2* - Continue the prohibition on the harvest of Atlantic striped bass in the EEZ.

*Option 3* - Apply state regulations to fish caught in the EEZ.

*Option 4* - Promulgate specific Federal regulations on Atlantic striped bass fishing in the EEZ.

#### Discussion

The ASMFC has declared the Atlantic striped bass to be recovered and consequently increased the allowable harvest in Amendment 5. The allowable harvest is conservatively increased for the next 2 years (until 1997) as a precautionary measure to assure the continued rebuilding of the stocks. During this transitional fishery, an unrestricted harvest of Atlantic striped bass from the EEZ (option 1) would be contrary to the continued rebuilding of

the stocks and could potentially damage the spawning stocks.

Without restrictions on the harvest in the EEZ, as would be the case in option 1, there is potential for a major commercial harvest from the EEZ. Striped bass could be harvested in the EEZ and transported to a state without striped bass regulations. This could be detrimental to the continued health of the striped bass stocks.

Fishermen have been patient during the moratorium in the EEZ. To continue the moratorium under option 2, after the ASMFC has declared the stock recovered, would not be a good management practice or support the ASMFC's actions under Amendment 5.

Option 3 is unacceptable, because applying the variety of state regulations in the EEZ would be impractical and could possibly discriminate among residents of different states. This approach would require that current regulations in each state be reviewed and found consistent with the national standards, and again reviewed if a state changed its regulations. This option would also be impractical given the wide variety of regulatory measures that states have implemented.

Option 4 is the most acceptable, because regulations in the EEZ can be developed to complement ASMFC's Striped Bass Plan. The management of Atlantic striped bass in state waters is primarily the responsibility of the coastal states, and is accomplished through the ASMFC's Striped Bass Plan. The ASMFC chose 28 inches (71.1 cm) as the minimum size a state may select as a baseline conservation measure without having to impose additional restrictions such as shorter seasons, smaller quotas, etc., to compensate for a state size limit lower than 28 inches (71.1 cm). The ASMFC selected the 28-inch (71.1 cm) minimum size to allow a significant portion of the striped bass population to reproduce before reaching the harvest size. NMFS believes that a minimum size limit of 28 inches (71.1 cm) for striped bass in the EEZ would best complement the ASMFC's Striped Bass Plan. The minimum size of 28 inches (71.1 cm) in the EEZ would prevent a fishery from developing on the 12–14 inch (30.5–35.6 cm) pan size fish that existed before the collapse of the striped bass stocks.

In addition, NMFS does not intend to interfere with the enforcement of state regulations within state waters. NMFS has examined the individual state regulations, and has concluded that the state regulations are consistent with the objective of the proposed Federal regulation, and that application by states of their regulations to fish

harvested in the EEZ (as long as no striped bass under 28 inches (71.1 cm) are harvested or possessed in the EEZ) and transported into state waters is necessary for effective state enforcement. An example of how this would work is that in a state such as Massachusetts which has a 34-inch (86.4 cm) minimum size limit for recreationally caught striped bass, a daily creel limit of one fish and a season that is open all year, a fisherman who had five fish that were 28 inches (71.1 cm) in length in the EEZ off Massachusetts would be fishing legally until he entered state waters, at which time the state requirements of one fish at a minimum size of 34 inches (86.4 cm) would be enforced by the state. The same is true for a commercial fisherman in Massachusetts. The minimum size limit is 34 inches (86.4 cm) and the season is from 1 July until the quota is reached. When a commercial fisherman reaches the state waters of Massachusetts, the striped bass must be at least 34 inches (86.4 cm) in length, the commercial season open, and the fish must meet any other state striped bass regulations. The bottom line is that striped bass taken in the EEZ must be at least 28 inches (71.1 cm), but also, more importantly, must comply with the state striped bass regulations when the striped bass are transported into state waters. In addition, any striped bass taken in the EEZ and transported into state waters for sale, must meet the state's commercial sale regulations (proper state licenses, etc.) and the catch would be applied against the state's seasonal quota. The actual quota is the same whether the EEZ is open or not.

Only two states will have a minimum size limit of less than 28 inches (71.1 cm). These two states have a 24-inch (61.0 cm) minimum size limit and meet the ASMFC conservation requirements by implementing additional restrictions to compensate for the smaller size limit. The ASMFC has currently frozen state size limits during the 2 year transition period of the target mortality rate required by Amendment 5 to the Striped Bass Plan. However, NMFS is concerned that the potential exists for every state to reduce its size limit below 22–24 inches (55.9–61.0 cm), which could have a negative impact on the rebuilding of spawning stocks. NMFS solicits comments on this issue. NMFS will continue working with the ASMFC to ensure striped bass stocks are protected.

#### Proposed Action

The proposed action would (1) remove the current moratorium on the possession in or harvest from the EEZ of

striped bass; and (2) prohibit the possession in or harvest from the EEZ of striped bass less than 28 inches (71.1 cm) total length (measured from the tip of the snout to the tip of the tail fin). The possession in the EEZ of striped bass less than 28 inches (71.1 cm) total length, would be illegal, regardless of where the fish were caught.

#### Classification

The Assistant Administrator for Fisheries has preliminarily determined that these actions are consistent with the national standards. The Secretary, before making the final determinations, will take into account the data, views, and comments received during the comment period.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 656

Fisheries, Fishing.

Dated: September 21, 1995.

Henry A. Beasley,

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 656 is proposed to be revised to read as follows:

### **PART 656—ATLANTIC STRIPED BASS FISHERY**

#### Sec.

- 656.1 Purpose and scope.
- 656.2 Relation to the Magnuson Act.
- 656.3 Definitions.
- 656.4 Civil procedures.
- 656.5 Specifically authorized activities.
- 656.6 Management measures.
- 656.7 Prohibitions.

Authority: 16 U.S.C. 1851 note.

#### **§ 656.1 Purpose and scope.**

This part implements section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, Public Law 100–589, and govern fishing for and possession of Atlantic striped bass on the Atlantic coast.

#### **§ 656.2 Relation to the Magnuson Act.**

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal offenses,

forfeitures, and enforcement apply with respect to this part as if this part were issued under the Magnuson Act.

**§ 656.3 Definitions.**

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Act* means the Atlantic Striped Bass Conservation Act Appropriations Authorization, Public Law 102-130, reproduced at 16 U.S.C. 1851 note.

*Atlantic striped bass* means members of stocks or populations of the species *Morone saxatilis*, found in the waters of the Atlantic ocean north of Key West, FL.

*Land* means to begin offloading fish, to offload fish, or to enter a port with fish.

*Total length* measurement of fish from tip of snout to the tip of the tail fin.

**§ 656.4 Civil procedures.**

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations of this part.

**§ 656.5 Specifically authorized activities.**

NMFS may authorize, for the acquisition of information and data, activities that are otherwise prohibited by this part.

**§ 656.6 Management measures.**

(a) *Minimum size in EEZ.* Except as provided in paragraph (b) of this section, the minimum allowable size for Atlantic striped bass possessed in or harvested from the EEZ, regardless of state regulations, is 28 inches (71.1 cm) total length (measured from tip of the snout to the tip of the tail fin); and

(b) *Regulations in state waters.* Nothing in this part is intended to interfere with any state's enforcement of that state's regulations concerning Atlantic striped bass.

**§ 656.7 Prohibitions.**

In addition to the prohibitions set forth in § 620.7 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

(a) Possess in or harvest from the EEZ any Atlantic striped bass that is less than the minimum size specified in § 656.6;

(b) Catch, take, possess, or harvest and retain any Atlantic striped bass in the EEZ that is less than the minimum size specified in § 656.6;

(c) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken in the EEZ less than 28 inches (71.1 cm) in total length;

(d) Possess (on board a vessel) any Atlantic striped bass less than the minimum size specified in § 656.6 while such vessel is in the EEZ; or

(e) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic striped bass.

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